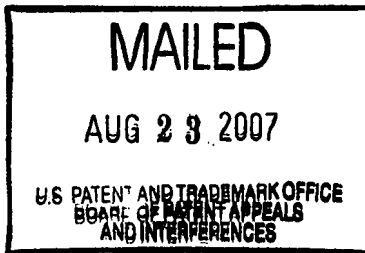


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte MONICA M. MARUGAN
and
THOMAS EBELING

Application 10/605,671

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER
AND
DISMISSAL OF APPEAL

This application was received electronically at the Board of Patent Appeals and Interferences on August 22, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

An examination of the Image File Wrapper (IFW) reveals that a Notice of Appeal and Amendment were filed on April 4, 2006. The Notice of Appeal was deemed to be unacceptable pursuant to an Office

communication mailed on April 18, 2006. A new Notice of Appeal was filed on April 25, 2006. An Appeal Brief was filed on June 26, 2006.

The Amendment filed April 4, 2006 cancelled claims 1-71 and added new claims 72-132. According to § 1206 of the Manual of Patent Examining Procedure (MPEP) (Eighth Edition, Rev. 3, August 2005): “Entry of a new amendment in an application on appeal is not a matter of right.” This Amendment does not appear to have been considered.

Section 41.31 of the Code of Federal Regulations (CFR)(2005) states:

(a) *Who may appeal and how to file an appeal.* (1) Every applicant, any of whose claims has been twice rejected, may appeal from the decision of the examiner to the Board by filing a notice of appeal accompanied by the fee set forth in § 41.20(b)(1) within the time period provided under § 1.134 of this title for reply.

Since the initial Appeal Brief¹ filed June 26, 2006 and the Examiner's Answer mailed September 26, 2006 were written on claims which were not twice rejected, this appeal is not ripe for consideration and decision. Hence, the appeal is DISMISSED.

¹ A new Appeal Brief was filed on October 31, 2006 pursuant to a Notice of Defective Brief mailed October 17, 2006.

Accordingly, it is ORDERED that the application is returned to the Examiner to:

1) vacate the Examiner's Answer mailed September 26, 2006 and make a proper rejection of claims 72-132 as set forth in the Amendment filed April 4, 2006; and

2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: Patrick J. Nolan
PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571) 272-9797

PJN:psb

Marina Larson & Associates LLC
Re: lexan
P.O. Box 4928
Dillon, CO 80435